IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8268 OF 2007

Lalit Khishi Dedhia .. Petitioner.

V/s.

Mallika M.Gandhi & Ors. .. Respondents.

Ms.J.Sidhwa i/b.P.D.Gala for petitioner.

Mr.Bharat Joshi for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st NOVEMBER, 2007.

P.C.:

1. Heard Counsel appearing for parties.

2. Perused the impugned order and the petition so also the annexures thereto. In my view, the learned Judge is right in holding that no relief can be granted to the petitioner in a suit which is disposed of. The remedy of the petitioner is to file a substantive proceeding and obtain such protective orders therein as are permissible in law.

3. Mr.Joshi points out that the suit is indeed filed in the Court of Small Causes at Mumbai for declaration by the petitioner. The same is dismissed and the Appeal is preferred against the dismissal. He submits that the Appeal is pending. This is not disputed by Ms.Sidhwa appearing for the petitioner.

4. In such circumstances, interest of justice would be subserved if the petitioner is permitted to avail of the remedy available to him in law to protect the possession and to enable the petitioner to do so, the Court Receiver or the Decree holder shall not dispossess the petitioner until 7th January, 2008.

5. Petition dismissed.

(S.C.Dharmadhikari, J.)